

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90,	)	WT Docket No. 10-112
95, and 101 To Establish Uniform License	)	
Renewal, Discontinuance of Operation, and	)	
Geographic Partitioning and Spectrum	)	
Disaggregation Rules and Policies for Certain	)	
Wireless Radio Services	)	

**COMMENTS OF PACIFICORP  
IN SUPPORT OF  
PETITIONS FOR RECONSIDERATION**

**PACIFICORP**

Jeffrey L. Sheldon  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, N.W., Suite 900  
Washington, DC 20036  
Tel: 202-857-2574  
Fax: 202-223-0833  
jsheldon@lb3law.com

Its Attorney

February 12, 2018

## Table of Contents

Table of Contents.....	ii
Executive Summary.....	iii
I. Introduction .....	1
II. Certification of Continued Compliance with Performance Requirements .....	3
A. Part 22 Paging Frequencies .....	3
B. Licenses Acquired on the Secondary Market.....	5
C. Narrowband Licenses .....	6
D. “Substantial Service” Performance Showings .....	7
III. The FCC Should Clarify the Standards for Evaluating Alternative Renewal Showings.....	8
IV. The Discontinuance Rule Should Be Clarified.....	10
V. Conclusion .....	12

## **Executive Summary**

PacifiCorp appreciates that the Commission harmonized the disparate rules that applied to license renewal and discontinuance of service in many Wireless Radio Services. However, PacifiCorp agrees with three petitioners that have requested reconsideration or clarification of the new rules: (1) the requirement for a geographic licensee to certify at renewal that it “continues to use” its facilities at or above the level required to meet its final performance requirement; (2) the standards that will be used to evaluate an alternative Renewal Showing if the licensee cannot make the safe harbor certifications for renewal; and (3) the certification regarding discontinuance of service.

PacifiCorp agrees with these petitioners that the requirement to certify continued performance at or above the level to meet the final performance requirement will be difficult to implement in a variety of circumstances, including Part 22 paging frequencies, licenses acquired on the secondary market, other types of narrowband licenses, and licenses for which the final performance requirement was met through a showing of “substantial service.”

If a licensee cannot make the renewal certification, it may submit a narrative Renewal Showing for case-by-case review by the FCC staff. However, the *Second Report and Order* does not describe the standard for staff review or how this review relates to the “substantial service” standard for performance, which is defined as “substantially above a level of mediocre service which just might minimally warrant renewal.” From this, it seems that the level of service required for renewal is substantially below what would be required to demonstrate substantial service. The Commission should take the opportunity on reconsideration to clarify the

relationship of these two definitions and provide regulatory certainty for licensees who cannot make the renewal certifications.

Finally, PacifiCorp agrees that further clarification is needed for the certification regarding discontinuance of service. This certification is very problematic for a license acquired on the secondary market. The certification should also be clarified with respect to language in the *Second Report and Order* which implies that a geographic licensee must operate at least one fixed transmitter within the geographic license area even if the final performance requirements for that license were met by coverage from a co-channel transmitter licensed to the same licensee in an adjacent geographic area. Coverage from a licensee's co-channel facilities in an adjacent license area is routinely used to demonstrate compliance with performance requirements. It would impose a harsh burden on the licensee to construct and maintain a transmitter in the license area just to avoid triggering the discontinuance rule.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 22, 24, 27, 74, 80, 90,	)	WT Docket No. 10-112
95, and 101 To Establish Uniform License	)	
Renewal, Discontinuance of Operation, and	)	
Geographic Partitioning and Spectrum	)	
Disaggregation Rules and Policies for Certain	)	
Wireless Radio Services	)	

**COMMENTS OF PACIFICORP  
IN SUPPORT OF  
PETITIONS FOR RECONSIDERATION**

PacifiCorp is submitting these comments in support of the petitions for reconsideration filed by three of the parties with respect to the Commission’s *Second Report and Order* in the above-captioned proceeding.<sup>1</sup>

**I. Introduction**

PacifiCorp is an electric utility that provides electric service to approximately 1.6 million retail customers in service territories covering about 136,000 square miles in portions of six western states: Utah, Oregon, Wyoming, Washington, Idaho and California. The combined service territory’s diverse regional economy ranges from rural agricultural and mining areas to urbanized manufacturing and government service centers. PacifiCorp has more than 8,300

---

<sup>1</sup> *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 10-112, FCC 17-105 (rel. Aug. 3, 2017) (“Second R&O”).*

megawatts of generation capacity from coal, hydro, renewable wind power, gas-fired combustion turbines and geothermal, and delivers electricity through approximately 57,000 miles of distribution lines and 15,000 miles of transmission lines. PacifiCorp operates the largest non-governmental bulk power system west of the Mississippi River. PacifiCorp operates as Pacific Power in Oregon, Washington, and California, and as Rocky Mountain Power in Utah, Idaho and Wyoming.

PacifiCorp has developed an extensive private land mobile radio system to support its multi-state utility operations. The company holds site-based licenses for Private Land Mobile Radio frequencies under Part 90, and it holds geographic area licenses for Paging and Radiotelephone frequencies under Part 22 and for VHF Public Coast frequencies under Part 80. PacifiCorp acquired its geographic licenses in secondary market transactions and through direct participation in FCC spectrum auctions. PacifiCorp's private land mobile radio system includes 169 base station sites, and provides internal communications to approximately 3,900 mobile and portable radios used by PacifiCorp's field crews. PacifiCorp therefore has a strong interest in the FCC's rules and policies in this proceeding.<sup>2</sup>

PacifiCorp agrees with the petitions for reconsideration filed by American Messaging Services, Inc. ("American Messaging"), the Critical Messaging Association ("CMA"), and Sensus USA and Sensus Spectrum LLC ("Sensus") that further clarification is needed with respect to the certifications licensees must file with applications for renewal of license, as well as clarification of the Renewal Showings that must be submitted if the licensee is unable to make the certifications. PacifiCorp has made significant investment in its land mobile radio system,

---

<sup>2</sup> PacifiCorp participated in the filing of joint comments, on August 6, 2010, in response to the *Notice of Proposed Rulemaking* in this proceeding.

and it relies on this system to support its utility operations. PacifiCorp respectfully requests that the Commission clarify the renewal certifications, and how the Renewal Showing relates to the “substantial service” performance standard, to give licensees greater regulatory certainty. PacifiCorp also supports clarification of certain statements in the *Second R&O* regarding discontinuance of service.

## **II. Certification of Continued Compliance with Performance Requirements**

New Section 1.949(e) provides a safe harbor for renewal of a geographic license if the applicant certifies that it “continues to use” its facilities at or above the level required to meet its final performance requirement, and that no permanent discontinuance of operation occurred during the license term. The certification is problematic for a variety of geographic licensees and for a variety of reasons related to application of the performance requirements themselves:

### **A. Part 22 Paging Frequencies**

Some Part 22 paging licensees operate integrated wide-area systems with multiple Part 22 channels, and need flexibility to reconfigure network operations to meet changing service needs. A requirement to maintain use of each geographic license at a level that would meet the final performance requirement would require the licensee to engage in re-calculation of coverage levels before every system modification just to make sure regulatory performance levels are maintained. Such a requirement would frustrate the licensee’s ability to make changes that will actually maintain or improve service.<sup>3</sup>

In PacifiCorp’s experience with Part 22 paging frequencies, it can be extremely difficult to design a wide-area system that meets the FCC’s performance (population coverage)

---

<sup>3</sup> American Messaging at 3-5.

requirements on a license-by-license basis while also trying to provide the level of coverage needed for effective system operation. These narrowband frequencies are used as part of a network, and are not intended to be used on a standalone basis to provide commercial service to subscribers in a dense urban environment, as contemplated by the performance requirements when adopted.

Unlike most geographic licenses that authorize a block of spectrum that can be divided into multiple channels for use throughout the area, Part 22 paging licenses authorize only a single channel or channel pair. Because of the need for geographic separation between co-channel transmitters, as well as spectral separation between channels used at the same site, wide area mobile operation requires the licensing and deployment of multiple channel pairs (*i.e.*, multiple licenses) in a carefully developed channel reuse plan. Coverage under each license will vary based on the reuse plan, with some channels covering areas of high population density and other channels covering more remote or rural areas. It is therefore extremely difficult to meet population-based performance metrics, or even make a “substantial service” showing, for each channel pair without reference to the network as a whole.

Requiring Part 22 paging licensees to justify coverage on a channel-by-channel basis is inconsistent with the Commission’s long-standing policies on “regulatory parity” among mobile services.<sup>4</sup> The licensee of a block of spectrum, channelized and used in a mobile network exactly

---

<sup>4</sup> The concept of regulatory parity for mobile services is embodied in Section 332 of the Communications Act. *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999) (regulatory parity among mobile services requires the FCC to apply the same build-out requirements to licensees providing substantially similar services regardless of how or when the original licenses were issued). To the extent narrowband Part 22 paging channels can now be used to provide wide-area trunked voice communications services that are identical to those provided over channels derived from wideband licenses, the FCC should allow licensees of Part 22 channels to make comparable performance showings; *i.e.*, based on totality of network



like a network comprised of Part 22 paging channels, would be able to meet a performance requirement based on the network as a whole, while the licensee of the same network using Part 22 paging frequencies must justify use of each and every channel without regard to its use as part of a unified network. This imposes a significant, and unnecessary, regulatory impediment to the effective use of this very limited spectrum.

As difficult as it is to satisfy the final performance requirements for Part 22 paging licenses, a requirement to maintain that same level of performance on the same license-by-license, channel-by-channel basis, in subsequent license terms will severely constrain the licensee's ability to adjust to changing operational needs. The Commission should clarify or modify the rules to remove this regulatory impediment to efficient use of the spectrum; for example, by making clear that performance requirements and substantial service showings for narrow bandwidth channels may be based on their contribution to the performance of a wide area unified network, and not just on a license-by-license, standalone basis.

#### **B. Licenses Acquired on the Secondary Market.**

The licensee of a geographic license acquired on the secondary market may not have records sufficient to be able to certify that the assignor used the frequencies to prescribed levels throughout the license term.<sup>5</sup> Moreover, the assignee might use the frequencies in a completely different configuration and for a completely different purpose, which would necessitate at least a

---

coverage in a geographic area irrespective of how each channel is deployed or reused within the network. Moreover, because Part 22 channels are authorized on a geographic basis, and a licensee could reconfigure its network to use any of its licensed channels at any of its sites within the geographic license area, it would be fair to consider the composite coverage of the network rather than focus on which channels are being used at any given sites on any given date. Putting aside issues of intra-system interference, any of the licensee's channels could be activated at any of its sites through a simple equipment adjustment, just as systems operating on wideband licenses are adjusted routinely to respond to changing needs.

<sup>5</sup> Sensus at 8.

temporary discontinuance of service and/or a diminution of service until the assignee can construct facilities sufficient to meet its operational requirements. In these instances, a licensee would not be able to make a certification that it continued to use the facilities provide at least the level of service required by the final performance requirement.

### **C. Narrowband Licenses**

Licensees of narrowband frequencies (*e.g.*, Paging, Multiple Address Systems, or Narrowband PCS) do not have as much flexibility to deploy systems to achieve coverage requirements in comparison to licensees of broadband systems, due to issues of co-channel reuse. A requirement to maintain coverage at or above geographic coverage requirements addresses mass market consumer services provided by broadband mobile wireless providers, but is inappropriate for narrowband frequencies that are used to serve a more targeted user base, such as utility service crews.<sup>6</sup>

For example, the performance metrics for one- or two-way paging systems were premised on a system that could use store-and-forward technology and could therefore operate co-channel base stations at closer spacing due to this ability to time-share a channel. A two-way mobile trunking system cannot use store-and-forward, and must have base stations that allow for real-time communications. As such, co-channel base stations must have significant geographic separation, which can leave significant gaps in a geographic license area where it is not possible to provide coverage under that same license.

Performance metrics (residential population) adopted decades ago for narrowband commercial operations, such as Part 22 paging, have little relevance to today's private, internal

---

<sup>6</sup> American Messaging at 4-5, and Sensus at 9-11.

voice communications systems that are designed to meet specific business needs.<sup>7</sup> If the Commission confirms that a geographic licensee must continually maintain service to levels that would meet the final performance metrics, it should also clarify that performance metrics for narrowband systems can be based on composite network coverage or service in the geographic license area, and not on license-by-license coverage.

#### **D. “Substantial Service” Performance Showings**

Geographic licensees that met the final performance requirements through a demonstration of “substantial service” have no specific metric or standards by which to certify that operations have continued throughout the renewal term at a level of “substantial service.” It is unclear how a licensee can certify that it continued to satisfy a substantial service standard throughout the prior license term without specific FCC review and approval based on all the circumstances.<sup>8</sup>

Although a licensee can submit a showing of substantial service to demonstrate compliance with the final performance requirement, the Commission has made clear that it will review these showings on a case-by-case basis. In some instances, the Commission has announced “safe harbors” by which a licensee can be assured that its showing of substantial service will be accepted; (*e.g.*, by exceeding certain metrics to meet the rural safe harbor). However, network operations, demographics of the service area, the licensee’s service mix, and other factors can change throughout a license term. It will be very difficult for a licensee to certify that it has continued to provide “substantial service” throughout the license term without knowing whether the Commission would agree with that assessment, which could only be done

---

<sup>7</sup> *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732 (1997).

<sup>8</sup> Sensus at 5, n.10.

after a case-by-case review of the licensee's performance throughout the 10-year license term. This is an unworkable standard, and would be especially difficult to meet for a licensee that acquired the license on the secondary market. In this situation, the new licensee would have very little on which to base a certification that it has continued to provide substantial service.

For all of the foregoing reasons, PacifiCorp supports the petitioners that have requested reconsideration or clarification of the certification of continued compliance with the performance requirements. In any event, PacifiCorp requests that the Commission take the opportunity to clarify that performance requirements for narrowband systems can be met by considering the totality of network operations, and not simply a license-by-license assessment of coverage or substantial service under the fiction that the frequencies are used on a standalone basis.

### **III. The FCC Should Clarify the Standards for Evaluating Alternative Renewal Showings**

If an applicant for renewal cannot meet the Renewal Standard by satisfying a safe harbor, it must make a Renewal Showing, independent of performance requirements, as a condition of renewal. PacifiCorp agrees with American Messaging, CMA, and Sensus that lack of a standard by which these showings will be reviewed creates significant regulatory uncertainty and risk for licensees. The new rules set out certain issues that must be addressed in the Renewal Showing, but provide no guidance as to how these criteria will be evaluated, except that the showings will be reviewed on a case-by-case basis looking at the "totality of all the factors."<sup>9</sup>

Standing alone, the case-by-case assessment provides maximum flexibility for a licensee to explain how it has used the spectrum to provide service to the public or to meet the licensee's private, internal communications needs. However, as CMA points out, the Commission should

---

<sup>9</sup> *Second R&O* para. 32.

make clear that case-by-case evaluation of the renewal showing should not subject licensees to an ever-increasing bar to license renewal, or to make it nearly indistinguishable from the safe harbor renewal standard itself.<sup>10</sup>

As noted above, it is very difficult for the licensee of a wide-area private land mobile radio system using narrowband Part 22 frequencies to demonstrate substantial service on a license-by-license basis and without reference to the licensee's network as a whole. Narrowband frequencies are usually used as part of an integrated wide-area system and are deployed to maximize channel reuse while avoiding intra-system interference as well as external system user interference. However, the licensee is required to demonstrate performance or substantial service as if the frequencies under a given license are used on a standalone basis, and without regard to the fact that channel reuse plans and engineering considerations limit the amount of coverage that might be possible in that license area. Case-by-case evaluation, whether to meet a Renewal Standard or to demonstrate performance, should allow for a holistic assessment of where, why and how the frequencies are being used, with honest recognition that the overall service provided by the network generates far greater public interest benefits than the sum of its individual licenses.

PacifiCorp agrees with CMA's analysis that the Commission's long-standing definition of "substantial service" indicates that the bare minimum standard for license renewal is a level of "mediocre service" that is substantially below what would qualify as substantial service for purposes of meeting a performance requirement.<sup>11</sup> As CMA points out, the Commission has not provided much guidance on what the difference is between substantial service and the renewal

---

<sup>10</sup> CMA at 3-4.

<sup>11</sup> CMA at 4.

standard, and what the minimum showing is that would warrant renewal under the new standard in Section 1.949(d). Because the new rules on license renewal make explicit reference to performance requirements, and the substantial service performance requirement has been defined in relation to the level of service required for license renewal, the Commission should take the opportunity on reconsideration to clarify both terms and their relationship to each other. PacifiCorp agrees with the petitioners that this regulatory uncertainty has a chilling effect on network investment.

#### **IV. The Discontinuance Rule Should Be Clarified**

Sensus points out that the certification regarding discontinuance of service and the certification of substantial compliance with the rules are “overly broad and impermissibly vague.”<sup>12</sup> It notes that while a licensee may be able to certify that it has never permanently discontinued operation with a license it has held since the initial grant of license, the certification is more difficult for licenses obtained in the secondary market.<sup>13</sup>

PacifiCorp agrees that further clarification is required in relation to the discontinuance certification. The new rule on discontinuance of service provides that a geographic license terminates automatically if the licensee “does not operate, or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee,” for a period of 180 consecutive days.<sup>14</sup> However, the description of this rule in the *Second R&O* implies a more stringent standard that does not

---

<sup>12</sup> Sensus at 7.

<sup>13</sup> Sensus at 7-8.

<sup>14</sup> New Section 1.953(b).

take into consideration how frequencies are used in networks that cover two or more adjacent license areas.

In paragraphs 58 and 60, the Commission explains that geographic licensees have flexibility under the discontinuance rule to modify their networks and to turn off individual transmitters, but they must operate at least one transmitter within the geographic license area to avoid triggering the discontinuance rule:

58. ...Thus, for geographic licensees, the period of discontinuance will not start for a given licensee until all network facilities operated under that license within the licensed area are discontinued.

\*\*\*

60. ...Given the flexibility geographic licensees have to turn off individual facilities in their licensed area so long as at least one facility continues to operate or continues to serve at least one non-affiliated subscriber, we find that 180 days provides licensees with ample time to effectuate network modifications without triggering a discontinuance period. ... (emphasis added).

This explanation goes beyond the language of the rule itself, and implies that a geographic license will be automatically terminated if the licensee has no fixed transmitting facilities within the license area even if the licensee is providing adequate coverage from co-channel facilities for which it holds a license in an adjacent geographic area. In many situations, it is possible for a licensee to meet a performance requirement for a given license based on coverage from a co-channel facility licensed to the same entity and located in an adjacent license area. This is especially the case where the licensee has acquired a small adjacent license area through partitioning. In these situations, it is a more efficient use of spectrum to install one transmitting facility in the larger geographic license area to serve both license areas; indeed, it may be impractical to install a fixed transmitter in a small license area that would provide adequate coverage without encroaching the border into another licensee's area.

Coverage from the licensee's co-channel transmitters in an adjacent license area is routinely used to satisfy performance requirements. However, the language in the *Second R&O* would suggest that failure of a licensee to install a fixed transmitter within the license area would cause the license to terminate automatically 180 days after the final performance requirement is met because the licensee does not have at least one facility that operates "within" the license area. That is, even though coverage from a transmitter in the adjacent license area was sufficient to demonstrate compliance with the final performance requirement, the language in the *Second R&O* would suggest that lack of a transmitter within the license area for more than 180 days would be deemed a discontinuance of service. PacifiCorp does not believe the Commission intended this result, and suggests that the language in the *Second R&O* should be clarified to state that the discontinuance rule is triggered when the licensee has no licensed transmitters that "provide service" within the license area on frequencies authorized by the license.

## **V. Conclusion**

For all of the foregoing reasons, PacifiCorp requests that the FCC clarify and/or reconsider certain aspects of the new rules on the certification of continued compliance with performance requirements, the standards by which Renewal Showings will be evaluated, and the application of the discontinuance rules to geographic licenses. Clarification of these rules will provide much needed regulatory certainty for licensees, such as PacifiCorp, that rely on wireless facilities to support the operation and maintenance of the nation's critical infrastructure.



**WHEREFORE, THE PREMISES CONSIDERED,** PacifiCorp respectfully requests that the Commission take action in this proceeding consistent with the views expressed above.

Respectfully submitted,

**PACIFICORP**

By: Jeffrey L. Sheldon  
Jeffrey L. Sheldon  
Levine, Blaszak, Block & Boothby, LLP  
2001 L Street, N.W., Suite 900  
Washington, DC 20036  
Tel: 202-857-2574  
Fax: 202-223-0833  
jsheldon@lb3law.com

Its Attorney

Dated: February 12, 2018

## CERTIFICATE OF SERVICE

I, Michaelleen Terrana, hereby certify that on this 12th day of February, 2018, I caused a copy of the foregoing “Comments of PacifiCorp in Support of Petitions for Reconsideration,” to be sent via first class mail, postage prepaid, to the following:

Jeff Chalmers  
Senior VP and CFO  
American Messaging Services, LLC  
1720 Lakepointe Drive, Suite 100  
Lewisville, TX 75057

Kenneth E. Hardman, Esq.  
5151 Wisconsin Ave., N.W.  
Suite 312  
Washington, D.C. 20016-4124  
- Counsel for Critical Messaging Association

David Alban, Esq.  
Associate General Counsel  
Xylem Inc.  
639 Davis Drive  
Morrisville, NC 27560  
- Counsel for Sensus USA Inc. and Sensus Spectrum LLC



---

Michaelleen Terrana